

1 MAYER BROWN LLP
LEE H. RUBIN (SBN 141331)
2 lrubin@mayerbrown.com
EDWARD D. JOHNSON (SBN 189475)
3 wjohnson@mayerbrown.com
DONALD M. FALK (SBN 150256)
4 dfalk@mayerbrown.com
ERIC B. EVANS (SBN 232476)
5 eevans@mayerbrown.com
ANNE M. SELIN (SBN 270634)
6 aselin@mayerbrown.com
Two Palo Alto Square, Suite 300
7 3000 El Camino Real
Palo Alto, CA 94306-2112
8 Telephone: (650) 331-2000
Facsimile: (650) 331-2061

9 *Attorneys for Defendant*
10 *Google Inc.*

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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 IN RE: HIGH-TECH EMPLOYEE
16 ANTITRUST LITIGATION

17 THIS DOCUMENT RELATES TO:
18 ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**DEFENDANT GOOGLE INC.'S
RESPONSE IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
PLAINTIFFS' SUPPLEMENT
REGARDING MOTION TO COMPEL
GOOGLE DOCUMENTS**

Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendant Google Inc. (“Google”) hereby responds in support of Plaintiffs’ Administrative Motion to Seal, Pursuant to Civil Local Rule 79-5(d), Portions of Plaintiffs’ Supplement Regarding Motion to Compel Google Documents (Dkt. 326). In accordance with the Motion to Seal and as set forth below, Google seeks to seal the following information:

- (i) Portions of Plaintiffs’ Supplement Regarding Motion to Compel Google Documents (“Plaintiffs’ Supplement”) (proposed redacted version attached as Exhibit A); and
- (ii) Portions of Exhibit 1 to the Supplemental Declaration of Dean M. Harvey in Support of Plaintiffs’ Motion to Compel (“Exhibit 1 to the Harvey Declaration”), which contain transcript excerpts from the deposition of William Campbell (proposed redacted version attached as Exhibit B).

This information has been designated Confidential or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Google is filing the accompanying Declaration of Eric B. Evans in support of Google’s sealing request.

I. LEGAL STANDARD

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has “carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion,” where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (“[A] ‘particularized showing’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.’”); *see also Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public interest in nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them

under seal.”).

II. GOOD CAUSE EXISTS TO SEAL GOOGLE’S CONFIDENTIAL INFORMATION

Portions of Plaintiffs’ Supplement and Exhibit 1 to the Harvey Declaration (transcript excerpts from the deposition of Mr. William Campbell) reflect confidential and highly sensitive information related to the unique business arrangement between Mr. Campbell and Google regarding his role as a senior advisor to Google, including how this arrangement was formalized and documented, as well as the details and express terms and conditions of that arrangement (such as the specific manner in which Mr. Campbell has been, and continues to be, compensated for his work as a senior advisor to Google). As demonstrated by the Declaration of Laszlo Bock previously filed on January 25, 2013 (Dkt. 319-3) (“Bock Decl.”), this information is closely held within Google and available only to select members of Google’s senior management and legal department. Bock Decl. ¶ 4. If this information were made public, Google would suffer competitive harm because Google’s competitors would discover, and therefore better understand, the unique and confidential arrangement between Mr. Campbell and Google regarding his role as senior advisor to Google, including how this arrangement was formalized and documented and the details and express terms and conditions of that arrangement (such as the specific manner in which Mr. Campbell has been, and continues to be, compensated for his work as a senior advisor to Google). Bock Decl. ¶ 5. Portions of Plaintiffs’ Supplement and Exhibit 1 to the Harvey Declaration discuss or contain information contained in the declaration of William Campbell. Declaration of Eric B. Evans in Support of Administrative Motion to Seal ¶¶ 2-3. Google designated the foregoing information “Confidential” or “Attorneys Eyes Only” under the Protective Order.

Personal compensation information is regularly sealed because of its confidential and private nature. *See Renfro v. Unum, et al.*, No. 09-2661, 2010 BL 104197 (N.D. Cal. May 10, 2010) (granting a motion to seal records containing plaintiffs’ salary information); *Nettles v. Farmers Ins. Exch.*, No. C06-5164, 2007 WL 858060, at *2, 2007 BL 247444 (W.D. Wash. Mar. 16, 2007) (holding that salary review notices for third parties “who have not chosen to have their

1 salary history placed into the public record” could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-
2 1043, 2010 U.S. Dist. LEXIS 82526, at n.1, 2010 BL 187807 (W.D. Okla. Aug. 09, 2012)
3 (noting that portions of summary judgment materials were filed under seal because they
4 contained “confidential salary information”). Similarly, compensation practices and decisions
5 are routinely subject to a sealing order. *Hertz Equip. Rental Co. v. Useda*, No. CV-10-4953,
6 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order to
7 enjoin a former employee from using a company’s “confidential and/or trade secret employee
8 compensation information”). Moreover, the sealed information also includes Mr. Campbell’s
9 social security number, which is required to be redacted under the Federal Rules. Fed. R. Civ. P.
10 5.2.

11 In addition, good cause exists to seal confidential information relating to a company’s
12 internal business strategies, such as its decisions on how to formalize and document unique
13 business arrangements. *See* Fed. R. Civ. Proc. 26(c)(1)(G) (permitting sealing of “a trade secret
14 or other confidential research, development, or commercial information”) (emphasis added);
15 *Krieger v. Atheros Commc’ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at
16 *3-4 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its
17 investment adviser that contained “sensitive and confidential information, including long-term
18 financial projections, discussions of business strategy, and competitive analyses”); *Network*
19 *Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721,
20 at *9 (N.D. Cal. Mar. 10, 2010) (sealing “internal information regarding [defendant’s] business
21 strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor,*
22 *Inc. v. Avago Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at *9 (D. Ariz.
23 Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling”
24 reason standard applicable to dispositive motions, including a “spreadsheet tracking information
25 regarding potentially competitive products,” and other business strategy documents, such as
26 information relating to “product competitiveness, and market and technological opportunities
27 and risks”).

1 **III. CONCLUSION**

2 For the foregoing reasons, Google respectfully requests that this Court order portions of
 3 Plaintiffs' Supplement and Exhibit 1 to the Harvey Declaration to be placed under seal. In
 4 accordance with Civil Local Rule 79-5(d), a proposed sealing order granting the Administrative
 5 Motion to Seal will be lodged with the Clerk in hard copy and served on counsel for Plaintiffs.
 6 Pursuant to this Court's January 11, 2013 Order, a copy of Plaintiffs' Supplement and Exhibit 1
 7 to the Harvey Declaration with the proposed redactions highlighted in yellow are attached as
 8 Exhibits C and D, respectively. In accordance with Civil Local Rule 79-5(c), Google's proposed
 9 redacted versions of Plaintiffs' Supplement and Exhibit 1 to the Harvey Declaration will be
 10 lodged with the Clerk in hard copy within a sealed envelope and will be served on counsel for
 11 Plaintiffs.

12 Dated: February 20, 2013

MAYER BROWN LLP

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 14 By: /s/ Eric B. Evans
 Eric B. Evans

15 Lee H. Rubin
 16 Edward D. Johnson
 17 Donald M. Falk
 Eric Evans
 Two Palo Alto Square
 3000 El Camino Real, Suite 300
 18 Palo Alto, CA 94306-2112
 Telephone: (650) 331-2057
 19 Facsimile: (650) 331-4557

20 *Attorneys for Defendant Google Inc.*